IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 28835 of 2007(G)

CMA.88/2007 of II ADDL. DISTRICT COURT, PALAKKAD
OS.233/2007 of PRINCIPAL SUB COURT, PALAKKAD
(IA.1512/2007)
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PETITIONER:

M/S.POABS PLANTATIONS PRIVATE LIMITED,
REPRESENTED BY ITS DIRECTOR,
THOMAS JACOB, WEST OTHERA P.O.
THIRUVALLA - 689 511.

BY ADV. SRI.N.JAMES KOSHY
SRI.T.SANJAY

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY
THE DISTRICT COLLECTOR, PALAKKAD.

2. THE CONSERVATOR OF FORESTS AND
CUSTODIAN OF VESTED FORESTS,
OLAVAKKODE.

BY SPL GOVT PLEADER (FORESTS) SRI. RANJITH THAMPAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.28835 of 2007

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Dated this the 28th day of September, 2007.

JUDGMENT

This Writ Petition is filed with a prayer to set aside Ext.P5 order and to declare that the findings and observations made in Ext.P5 judgment are unwarranted, unnecessary and without jurisdiction.

2. The writ petitioner filed a suit for injunction against the Government and the court below granted an order of temporary injunction. Against that order, the Government preferred a Civil Miscellaneous Appeal and along with it, it filed a stay petition to stay the operation of the order of injunction. The appellate court stayed the order of injunction and against that the plaintiff in the suit came before this Court with W.P.(C) No.21835 of 2007-Y. When the matter came up for admission, this Court ordered notice to the Government Pleader. Government Pleader submitted that immediately after the order was passed by the

appellate court, the Government had taken possession of the property and it is in their custody and therefore, the prayer for temporary injunction has become infructuous.

3. After hearing both sides, this Court also found that since the Government had already taken possession of the property, the prayer has become infructuous and therefore directed the trial court to try and dispose of the matter as expeditiously as possible, within a time frame of three months, if possible and otherwise by taking one more month for doing the same. This Court also held that it is only just and proper that a direction be given to the trial court to dispose of the Original Suit itself after permitting the defendants to file written statement and allowing the parties to produce documentary evidence in support of their contentions and in case of necessity, by allowing the amendment of the plaint as well. Since it was an order passed in an interim application in the pending C.M.A., it became necessary for the appellate court to dispose of the C.M.A. itself. In the light of the directions given by me in the Writ Petition, the learned Additional District Judge should have dismissed the C.M.A. itself as infructuous. But unfortunately in paragraph 10 of the order,

Ext.P5, he had made some observations. I feel that these observations shall not be taken as any guideline or any finding when the learned Subordinate Judge is to proceed with the matter or in other words, untrammelled by the observations the trial court is to proceed with the matter and dispose of the matter in accordance with law.

4. The learned Government Pleader wants time to file a statement. But it is submitted that the matter is listed for tomorrow and an order is necessary. Since I am convinced about the facts and circumstances of the case, I have taken into consideration the submission of both the counsel and is passing the above order.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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